



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM198Dec15**

In the matter between:

**ALSTOM TRANSPORT HOLDINGS SA (Pty) Ltd**

Primary Acquiring Firm

and

**OPICONSIVIA INVESTMENTS 265 (Pty) Ltd**

Primary Target Firm

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Panel	: Norman Manoim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 24 February 2016
Order Issued on	: 24 February 2016
Reasons Issued on	: 16 March 2016

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### Reasons for Decision

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#### Approval

- [1] On 24 February 2016, the Competition Tribunal ("Tribunal") approved the merger between Alstom Transport Holdings SA (Pty) Ltd and Opiconsivia Investments 265 (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

## **Parties to proposed transaction**

### *Primary acquiring firm*

- [3] The primary acquiring firm is Alstom Transport Holdings SA Proprietary Limited ("Alstom"), a private firm incorporated in accordance with the laws of the Republic of South Africa.
- [4] Alstom is controlled by ALSTOM (parent company of the Alstom Group), a public company registered in France.
- [5] Alstom operates throughout the world and is active in the supply of a complete range of systems, equipment and services in the railway sector. Its railway product range includes rolling stocks such as passenger and freight coaches, locomotives, railway signaling, train control systems, train equipment, rail infrastructure and associated services.
- [6] In South Africa, Alstom's transport business consists only of operations through Gibela. Gibela manufactures and maintains passenger trains for PRASA in terms of a Manufacture and Supply Agreement ("MSA") and a Technical Support and Spares Supply Agreement ("TSSSA"). Currently, Gibela's operations are strictly ring-fenced to these two contracts.

### *Primary target firm*

- [7] The primary target firm is Opiconsivia Investments 265 Proprietary Limited ("Opiconsivia Investments 265"), which trades under the name Commuter Transport & Locomotives Engineering Proprietary Limited ("CTLE").
- [8] CTLE is ultimately owned by Commuter Transport Engineering Investments Proprietary Limited ("CTE"). CTE currently holds a controlling interest in Opiconsivia Investments 268 which in turn holds a controlling interest in CTLE.
- [9] CTLE acts as a sub-contractor to Original Equipment Manufacturers (OEMs) to design and build trains in South Africa including electric and diesel locomotives, coaches and electric multiple units. In addition, it also carries out overhauling, refurbishing and upgrading of the South African passenger and freight rail rolling stock. This includes all types of electric locomotives, passenger electrical multiple units, all types of freight wagons and specialized railway equipment.

### **Proposed transaction and rationale**

- [10] Alstom intends to acquire 51% of the issued share capital in CTLE from Opiconsivia Investments 268. In addition it is submitted that the merging parties intend to expand the business to offer solutions throughout Southern Africa post-merger.
- [11] Alstom submits that the transaction is aimed at broadening the scope of Alstom's current offering in the South African rail sector. Following the completion of Gibela's contracts with PRASA, Alstom submits that it will no longer have a local company through which to provide rolling stock products and services to the South African railway market. As such, it submits that the proposed transaction will provide Alstom with a local company and access to manufacturing and maintenance capacities. Furthermore, subject to the expected development of the business, the merging parties submit they also foresee scope to expand the geographic reach of the business to other sub-Saharan African markets as well as potentially integrating the CTLE site into Alstom Transport's global manufacturing portfolio to serve overseas markets.
- [12] CTLE submits that its business has been under significant financial stress for a number of years. As such, the proposed transaction presents an opportunity for it ensure the sustainability and existence of the company. In particular, by partnering with Alstom, CTLE submits that it will not only be able to return to a sound financial position but it will also be able to become a more effective competitor by expanding its technology and product offering, as well as broadening its geographic reach. It submits that the proposed transaction will benefit CTLE, its shareholders, its employees, the greater Nigel area and the competitiveness of the South African rail transport sector.

### **Impact on competition**

- [13] The Commission considered the activities of the merging parties and found that although the products supplied by the merging parties were intended for use in the rail industry, Alstom did not provide any other passenger or freight train design, manufacture, maintenance or refurbishment services in South Africa, apart from its activities with PRASA through Gibela. As mentioned previously, Gibela is a sole supplier of services to PRASA in terms of the MSA and TSSSA.

- [14] On the other hand, CTLE acts as a sub-contractor to OEMs to design and build trains locally and also refurbishes trains. CTLE currently competes with firms such as Transnet Engineering, Naledi Rail Engineering Proprietary Limited ("Naledi Rail Engineering") and Wictra Holdings ("Wictra").
- [15] Given that Gibela only provides its services to PRASA, the Commission was of the view that Alstom and CTLE do not compete in the South African rail industry. Furthermore customers and competitors of the merging parties contacted by the Commission confirmed that Alstom and CTLE do not compete in the South African rail industry.
- [16] According to the merging parties, CTLE currently has very limited capability in the design, construction and manufacturing of newly built rolling stock. The proposed transaction will therefore enable CTLE to expand its current product offering.
- [17] On the basis of the above, the Commission was of the view that the proposed transaction was unlikely to substantially lessen or prevent competition in the market.
- [18] In its investigation, the Commission also sought to obtain the views of third parties and contacted customers, competitors of the merging parties as well as trade unions. The Commission submitted that of all the third parties contacted, only Wictra Holdings (Pty) Ltd ("Wictra") raised an objection to the proposed transaction. Wictra is primarily involved in the refurbishment of trains for PRASA. Given Alstom's declaration of interest to PRASA to be considered for the modernization of the refurbished trains, Wictra's main concern surrounded the potential for the merging parties to dominate the refurbishment market by virtue of its size, scale and resources.
- [19] However according to the merging parties, there are a number of firms in South Africa that have comparable capabilities to CTLE. Furthermore, the merging parties submit that Alstom does not offer these services apart from under the TSSSA, and as such will be a new entrant in the market. Therefore according to the parties, the proposed transaction will not lessen or prevent competition within the local market. In addressing the issue of PRASA, the merging parties state that PRASA acts independently and will award the contract for the modernization of the refurbished trains to the firm with the most competitive bid.
- [20] In addressing the concerns of Wictra, the Commission confirmed that PRASA does dictate the whole tender process and appoints contractors, such as Wictra, based on

the individual service provider's capacity to deliver and historical performance (cost, quality and on time delivery). In addition, it also appeared that PRASA awarded contracts on a geographic basis. According to the Commission, this last finding suggested that PRASA could not award all of its refurbishment projects to CTLE post-merger, given that the allocation of contracts appeared to be regionally driven. Overall, the Commission submitted that it could not find any evidence to support the theory that the merging parties would be able to behave in a manner that could exclude its competitors from tendering for these projects.

[21] At the hearing, the Tribunal allowed Wictra and Opiconsivia Investments 265 to make further representation with regard to the allegations of Wictra. However after much debate between the parties, the Tribunal was of the view that the issues raised did not differ to those investigated by the Commission and subsequently concurred with the Commission's findings. What did emerge at the hearing was that CTLE was at present under performing and thus losing business to Wictra on contracts that it had won tenders for. The merger will thus improve CTLE's competitiveness as it will enable it to invest more in its business to improve its level of service.

[22] The Tribunal concurs with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. The primary reason for doing so is that this is a one customer market and the customer has sufficient buying power to ensure that the market for the services it requires remains competitive.

### **Public interest**

[23] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment.

[24] In assessing the effect of the proposed transaction on international competitiveness, the merging parties submitted that they intend on expanding the business to offer solutions throughout Southern Africa. In addition, the merging parties are of the view that the CTLE site could also be integrated into Alstom Transport's global manufacturing portfolio to serve overseas markets.

[25] Given the above submissions, the Commission is of the view that the proposed transaction is likely to have a positive effect, as the proposed transaction is likely to give CTLE the ability to compete in international markets.

[26] The proposed transaction further raised no other public interest concerns.

**Conclusion**

[27] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition no other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

  
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**Mr Norman Manoim**

16 March 2016  
DATE

**Ms Medi Mokuena and Prof Imraan Valodia**

Tribunal Researcher:	Karissa Moothoo Padayachie
For the merging parties:	Fasken Martineau
For the Commission:	Zanele Hadebe and Thabelo Masithulela
Intervenor:	Wictra Holdings (Pty) Ltd